

[Dkt. No. 76]

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Camden Vicinage

UNITED STATES OF AMERICA,

v.

WILSON RAMIREZ

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Crim. No. 09-579 (RMB)

: **OPINION**

This matter comes before the Court upon Defendant Wilson Ramirez' Motion to Reduce Sentence pursuant to the First Step Act, 18 U.S.C. § 3582(c)(1)(A)(i). Defendant Ramirez is currently serving his sentence at Allenwood Medium Prison in Allenwood, Pennsylvania. The Court having considered the parties' submissions, and for the reasons discussed below, denies the Motion.

On May 10, 2010, Mr. Ramirez pled guilty to one count of conspiracy to possess with intent to distribute more than 5 kilograms of cocaine, in violation of 21 U.S.C. § 846 (contrary to 21 U.S.C. §§ 841(a)(1) and (b)(1)(A)), and one count of possession of a weapon by a convicted felon, in violation of 18 U.S.C. § 922(g)(1). He faced a Guidelines range of 168 to 210 months imprisonment. At sentencing, this Court upwardly varied from Mr. Ramirez's Guidelines range based on the nature of his criminal history, including his repeated parole violations, the

seriousness of the offense, and the need to provide just punishment and specific deterrence. The Court also concluded that the public would be safer and protected with a sentence higher than the recommended Guidelines range. As a result, the Court sentenced Mr. Ramirez to a term of 234 months of imprisonment on Count One (drug conspiracy) and 120 months on Count Two (felon in possession), both sentences to be served concurrently for a total term of 234 months imprisonment. On February 3, 2012, the Third Circuit Court of Appeals affirmed.

In February 2016, Mr. Ramirez moved for a sentence reduction under Amendment 782 (Drugs Minus Two). On April 4, 2019, this Court granted Mr. Ramirez's Amendment 782 motion and reduced his sentence to 199 months imprisonment. Mr. Ramirez is currently scheduled for release from his term of imprisonment on August 9, 2023.

In support of his Motion, Defendant admits that although "does not suffer from any particular COVID-19 risk factors, his age (43) and host of chronic medical conditions are relevant Mr. Ramirez suffers from numerous chronic medical conditions, including prediabetes, hyperlipidemia, gastro-esophageal reflux disease, herpes simplex, an enlarged prostate, and constipation. . . . He is prescribed six different daily medications to deal with his chronic conditions. Dkt. No. 76, at 4. According to BOP records submitted by the Government,

Defendant was tested for COVID-19 and tested positive on September 26, 2020. Defendant has been seen by the medical staff since then and at his follow-up visits denied fevers, body aches, fatigue, loss of the sense of smell or taste, running nose, congestion, sore throat, cough, shortness of breath, and nausea and vomiting and diarrhea. Govt. Opp., Dkt. No. 76, at 13.

The Government has introduced evidence of the measures that the Bureau of Prisons has taken to prevent the spread of the coronavirus. It is set forth at length in the Government's Response. See Govt. Opp., Dkt. No. 76, at 4-6.

DISCUSSION

Although a district court generally has limited authority to modify a federally-imposed sentence once it commences, Dillon v. United States, 560 U.S. 817, 825 (2010), the First Step Act ("FSA"), 18 U.S.C. § 3582(c)(1)(A)(i), permits district courts to grant compassionate release where there exists "extraordinary and compelling reasons" to reduce a sentence. The statute provides, in relevant part, that:

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or

supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that--

(i) extraordinary and compelling reasons warrant such a reduction. . .

18 U.S.C. § 3582(c) (emphasis added). As such, under the FSA, a defendant seeking a reduction in his term of imprisonment bears the burden of establishing both that he has satisfied (1) the procedural prerequisites for judicial review, and (2) that compelling and extraordinary reasons exist to justify compassionate release.

This Court may only grant a motion for reduction of sentence under the FSA if it was filed "after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf" or after 30 days have passed "from the receipt of such a request by the warden of the defendant's facility, whichever is earlier." 18 U.S.C. § 3582(c)(1)(A); see also United States v. Raia, No. 20-1033, 2020 WL 1647922, at *2 (3d Cir. Apr. 2, 2020), as revised (Apr. 8, 2020). This is a statutory requirement that this Court may not waive. See, e.g., Raia, 2020 WL 1647922 at *2; Massieu v. Reno, 91 F.3d 416, 419 (3d Cir. 1996); Ross v. Blake, 136 S. Ct. 1850 (2016).

There is no disagreement that Defendant has exhausted his administrative remedies. United States v. Raia, Civ. No. 20-1033, 2020 WL 1647922, at *2 (3d Cir. Apr. 2, 2020).

Under 18 U.S.C. § 3582(c)(1)(A), this Court may, in certain circumstances, once the exhaustion requirement has been satisfied as it has here, grant a defendant's motion to reduce his term of imprisonment "after considering the factors set forth in [18 U.S.C. § 3553(a)]," if the Court finds that (i) "extraordinary and compelling reasons warrant such a reduction," and (ii) "such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A)(i).

The Defendant bears the burden to establish that he is eligible for a sentence reduction. United States v. Jones, 836 F.3d 896, 899 (8th Cir. 2016); United States v. Green, 764 F.3d 1352, 1356 (11th Cir. 2014).

The Sentencing Commission has issued a policy statement addressing reduction of sentences under § 3582(c)(1)(A). As relevant here, the policy statement provides that a court may reduce the term of imprisonment after considering the § 3553(a) factors if the Court finds that (i) "extraordinary and compelling reasons warrant the reduction;" (ii) "the defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g);" and (iii) "the

reduction is consistent with this policy statement." U.S.S.G. § 1B1.13.¹

The policy statement includes an application note that specifies the types of medical conditions that qualify as "extraordinary and compelling reasons." First, that standard is met if the defendant is "suffering from a terminal illness," such as "metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, [or] advanced dementia." U.S.S.G. § 1B1.13, cmt. n.1(A)(i). Second, the standard is met if the defendant is:

- (I) suffering from a serious physical or medical condition,
 - (II) suffering from a serious functional or cognitive impairment, or
 - (III) experiencing deteriorating physical or mental health because of the aging process,
- that substantially diminishes the ability of the defendant to provide self-care within the

¹ The policy statement refers only to motions filed by the BOP Director. That is because the policy statement was last amended on November 1, 2018, and until the enactment of the First Step Act on December 21, 2018, defendants were not entitled to file motions under § 3582(c). See First Step Act of 2018, Pub. L. No. 115-391, § 603(b), 132 Stat. 5194, 5239; cf. 18 U.S.C. § 3582(c) (2012). In light of the statutory command that any sentence reduction be "consistent with applicable policy statements issued by the Sentencing Commission," 18 U.S.C. § 3582(c)(1)(A)(ii), and the lack of any plausible reason to treat motions filed by defendants differently from motions filed by BOP, the policy statement applies to motions filed by defendants as well.

environment of a correctional facility and from which he or she is not expected to recover.

Id. § 1B1.13, cmt. n.1(A)(ii). The application note also sets out other conditions and characteristics that qualify as "extraordinary and compelling reasons" related to the defendant's age and family circumstances. Id. § 1B1.13, cmt. n.1(B)-(C). The note recognizes the possibility that BOP could identify other grounds that amount to "extraordinary and compelling reasons." Id. § 1B1.13, cmt. n.1(D).

Here, Defendant does not have any present medical issues that are considered COVID-19 risk factors. In fact, although Defendant contends that he risks serious health consequences if reinfected, the CDC reports that reinfection is "rare" although it is being studied more extensively. See Def. Reply, Dkt. No. 79, at 1, n.3. The fact that the Government introduced evidence that Defendant does not appear to be suffering any known complications or experiencing any significant symptoms of the virus counsels against a compassionate release.

Moreover, Defendant has not established an "extraordinary and compelling reason" to reduce his sentence. The Court finds that he has failed to demonstrate that he merits release under the § 3553(a) factors. Under the applicable policy statement, this Court must consider the § 3553(a) factors, as "applicable,"

as part of its analysis. See § 3582(c)(1)(A); United States v. Chambliss, 948 F.3d 691, 694 (5th Cir. 2020).

A sentence reduction here would be inconsistent with the § 3553(a) factors. First, a reduction would fail to “reflect the seriousness of the offense,” “promote respect for the law,” and “provide just punishment for the offense.” 18 U.S.C. § 3553(a). Defendant engaged in a very serious drug trafficking offense that involved multi-kilogram quantities of cocaine and the Defendant’s possession of firearms as a convicted felon in relation to his drug trafficking. In addition, Defendant has a long and troubling criminal history which warranted an upward variance.

The “history and characteristics of the defendant” and the need to protect the public also counsel against any sentencing reduction. As discussed, the Defendant is no stranger to the criminal justice system. His life of crime has resulted in multiple felony convictions including for violent assaults and distribution of narcotics. His criminal history and disregard for the justice system display an individual with violent propensities. As this Court stated at sentencing: “Your criminal history stands out as one of the most disturbing criminal histories I’ve seen.” See Dkt. No. 59, at 39. The need to protect the public is paramount here.

Finally, for similar reasons, the need for deterrence and the need to punish the Defendant also weigh against reducing Defendant's sentence. Indeed, the Government has introduced evidence that Defendant has committed several infractions while in BOP custody. Defendant "recognizes that his institutional conduct has not been pristine," and goes on to explain none of the infractions involved violence. Dkt. No. 79, at 9. That is of little consolation to the Court. Defendant simply fails to follow the law, and the rules. Sadly, the Court has little confidence he will abide by any supervisory rules if released.

The Court does not take lightly Defendant's fear of contracting COVID-19. Here, however, the BOP is taking measures to contain the spread of COVID-19,² and Defendant has not persuaded this Court that there is an extraordinary and compelling reason to reduce his sentence or that he merits release under the §3553(a) factors.

The Motion is therefore DENIED.

s/Renée Marie Bumb_____
RENÉE MARIE BUMB
United States District Judge

Dated: November 17, 2020

² At present, there are two confirmed cases of COVID-19 among inmates and one confirmed case of COVID-19 among staff at FCI Allenwood Medium. See www.bop.gov/coronavirus (last visited November 17, 2020).